IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 457 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LADUBHAI PYARCHAND SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 457 of 2000

MR JV JAPEE for Petitioner No. 1

MR KG SETH-PUBLIC PROSECUTOR for Respondent No. 1

MR HN JHALA for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/02/2002

ORAL JUDGEMENT

#. The present Revision Application under Section 397 read with 401 of the Criminal Procedure Code, 1973 has been preferred by the petitioner - original accused

in Criminal Case No.1917/1999 before the learned Chief Judicial Magistrate, Sabarkantha at Himmmatnagar.

#. The contesting respondent has preferred the aforesaid Criminal Case against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. The contention of the petitioner before the trial Court was that there were overwriting and interpolation in the cheque in question and, therefore, the complaint was not maintainable. The learned Magistrate found that this was a matter of evidence and without recording evidence, the above factual aspect could not be decided and, therefore, the complaint could not be dismissed and the petitioner could not be discharged or acquitted and, therefore, the learned Magistrate dismissed the said application Ex.6 of the present petitioner by order dated 22.8.2000.

#. Feeling aggrieved by the said order of the learned Magistrate the petitioner has preferred this Revision Application before this Court. The petitioner has contended here that the cheque in question shows interpolation and overwriting on the face of the cheque itself and, therefore, the learned Magistrate ought to have dismissed the complaint and acquitted the petitioner. Since that has not be done, the order impugned is illegal and perverse and deserves to be quashed and set aside.

#. In response to the service of rule issued by this Court on 26.11.2001 learned APP Mr.K.G.Seth appears for the State and Mr.H.N.Zala, learned advocate appears for respondent No.2 - original complainant before the trial Court.

#. I have heard the arguments advanced by Mr.J.V.Japee, for the petitioner, Mr.K.G.Seth, learned APP for the State and Mr.H.N.Zala, learned advocate for contesting respondent.

#. Mr.J.V.Japee has argued the matter stating that the cheque in question carries interpolation and overwriting and the amount in question has been subsequently altered in words and figures and, therefore, the complaint on the basis of such a cheque was not maintainable.

#. Whether or not there are interpolation and whether these interpolation have been subsequently introduced by the contesting respondent and whether they are genuine or ingenuine, whether they are authenticated or authorised or unauthenticated and unauthorised, these are all

questions of fact which can be dealt with and decided only after recording of the evidence. Therefore, without any evidence on record or other materials on record it was not possible for the learned Magistrate to dismiss the complaint and acquit the petitioner stating that the cheque in question was not properly proved and, therefore, the complaint was not maintainable.

#. Even before this Court also, same difficulty continuous, there is no evidence or other materials on record to show anything about the cheque in question.

#. Even the learned APP and learned advocate for contesting respondent also argue that the complaint could not be dismissed in absence of any evidence on record about the contents of the cheque.

##. I am of the opinion that without any evidence on record nothing can be said about disputed cheque and, therefore, the complaint cannot be dismissed and petitioner cannot be acquitted or discharged. In that view of the matter the order of the learned trial Court cannot be treated to be illegal and perverse. In that view of the matter there is no substance or merits in the present Revision Application and it deserves to be dismissed.

##. For the foregoing reasons this Revision Application is dismissed. Rule is discharged. The petitioner will be at liberty to submit appropriate application after the completion of evidence before the trial Court.

(D. P. BUCH, J.)
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